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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/975,047	10/11/2001	Benny B. Johansen	RXSD 1020-1	1000
22470	7590	07/03/2006	EXAMINER	
HAYNES BEFFEL & WOLFELD LLP P O BOX 366 HALF MOON BAY, CA 94019			TRAN, CON P	
			ART UNIT	PAPER NUMBER
			2615	

DATE MAILED: 07/03/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 09/975,047	<b>Applicant(s)</b> JOHANSEN ET AL.	
	<b>Examiner</b> Con P. Tran	<b>Art Unit</b> 2615	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 17 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1 and 3-18 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1 and 3-18 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                                   | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____  |

## **DETAILED ACTION**

### ***Continued Examination Under 37 CFR 1.114***

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 04/17/2006 has been entered.

### ***Claim Rejections - 35 USC § 103***

2. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

3. **Claims 1, 3, 5-13, 15-18** are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn U.S. Patent 6,379,314 in view of Clark et al. U.S. Patent 5,928,160 (hereinafter, "Clark"), both cited by Applicants.

Regarding **claims 1 and 12**, Horn teaches a method of testing the hearing of a user utilizing a computer system, the computer system including a computer and a speaker, the computer operable to output an electrical signal to the speaker, the speaker operable to convert the electrical signal into a stimulus (see Abstract; col. 3, lines 14-25), the method comprising:

a) downloading a computer program (i.e., for hearing test including system compatibility) from a server to the computer (internet; col. 4, lines 27-30);

b) executing the computer download program on the computer (i.e., the computer system initiates a test program), the execution of the download computer program generating an audio stream (i.e., by electronic data, Abstract; data instructs user's computer to generate a sequence of pure tone, i.e., a TOV "raw data" is created for each sound card then sound card generates audio stream for speakers or earphones, col. 4, lines 45-67; col. 6, lines 23-33);

c) based upon the audio stream (generated by sound card of PC system, col. 4, lines 45-67; col. 6, lines 23-33), generating a stimulus (e.g., sound; col. 6, lines 34-50); and

d) receiving an input from the user that indicates if the user heard the stimulus (see Abstract; col. 3, lines 14-25; col. 6, lines 34-50).

Horn does not explicitly disclose the audio stream comprises digital data representing an audio signal based upon one or more audio parameters included in the downloaded computer program.

Clark discloses a home hearing test system and method in which a person would connect to the server over the network using a personal computer, would download the digital signals which comprise the hearing test (i.e., hearing test "program"), and would store the signals in a local memory device such as RAM, CD-ROM, or hard disk. The digital signals would then be converted to audio signals (i.e., generating) through the use of a sound card connected to the personal computer (col. 6, lines 26-35). In addition, when a computer readable medium such as a CD-ROM is used to store the hearing test, one skilled in the art will recognize that the medium may contain computer programs which cause to be displayed on the computer's monitor the instructions, announcements and look-up table used during the hearing test, or which automatically determine the subject's initial hearing threshold level estimation based on the results of the 10 dB step sequences and automatically transfer the subject to the appropriate 2 dB step sequence to obtain the more accurate results (col. 13, lines 28-33).

It would have been obvious to one of ordinary skill in the art at the time the invention was made to have incorporated a home hearing test system and method of Clark teaching with a method of testing the hearing of Horn such that to obtain a downloaded computer program as claimed for purpose of providing a hearing test that should be inexpensive, accurate, and easy to use, administer, and score, as suggested by Clark in column 2, lines 22-24.

Claim 12 is met since download computer program (i.e., hearing test "program", download the hearing test store in CD-ROM that the medium may contain computer

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programs; see Clark col. 6, lines 26-35, and col. 13, lines 28-33) causing generation of a stimulus (i.e., sound, tones) by supplying the audio stream (generated by sound card of user's computer) to the speaker (see Horn, col. 4, lines 45-67).

Regarding **claims 3 and 13**, Horn, as modified, further teaches wherein the act of downloading the computer program includes transferring the computer program from the server to the computer via the Internet (see Abstract; col. 3, lines 14-25).

Regarding **claims 5 and 15**, Horn, as modified, further teaches wherein the one or more audio parameters comprises an audio parameter that indicates at least one frequency of the stimulus (250-12,00Hz; Abstract; col. 3, lines 14-25; col. 4, lines 37-45).

Regarding **claims 6 and 16**, Horn, as modified, further teaches wherein the one or more audio parameters comprises an audio parameter that indicates at least one amplitude of the stimulus (different amplitudes, i.e. dB; Abstract; col. 3, lines 14-25).

Regarding **claims 7 and 17**, Horn, as modified, further teaches wherein the one or more audio parameters comprises an audio parameter that indicates at least one type of the stimulus (white noise, col. 5, lines 8-10; pure tone; col. 5, lines 21-27).

Regarding **claim 8**, Horn, as modified, further teaches wherein the one or more audio parameters comprises an audio parameter that indicates that two stimulus types should be combined to generate the stimulus (pure tone; col. 5, lines 21-27).

Regarding **claim 9**, Horn, as modified, further teaches wherein the one or more audio parameters comprises an audio parameter that indicates that the program should determine which stimulus should be presented in the test (table of value; col. 7, line 58 – col. 8, line 9).

Regarding **claim 10**, Horn, as modified, further teaches wherein the act of generating a stimulus includes generating a stimulus within a user-defined frequency range (base line; col. 4, lines 34-45).

Regarding **claims 11 and 18**, Horn, as modified, further teaches the method of claim 1, further including a) sending first data to the server; b) qualifying the hearing of the user; and c) sending second data to the computer (see Abstract; col. 3, lines 14-25).

4. **Claims 4 and 14** are rejected under 35 U.S.C. 103(a) as being unpatentable over Horn U.S. Patent 6,379,314 (cited by Applicants) in view of Clark et al. U.S. Patent 5,928,160 (hereinafter, "Clark"), and further in view of Admitted Prior Art (hereinafter, "APA").

Regarding **claims 4 and 14**, Horn in view of Clark teaches the method of claim 1. Horn, as modified, disclose transferring a computer program over Internet (col. 3, lines 14-19). However, Horn does not explicitly disclose, wherein the act of downloading the computer program includes transferring the computer program from the server to the computer via an email.

APA discloses as is well known, computer programs may be attached to emails that can be easily distributed (i.e., transferred) over the Internet (i.e., "As is well known, computer programs may be attached to emails . . ."[0013], page 4).

It would have been obvious to one having ordinary skill in the art at the time the invention was made to transfer the program as disclosed by Horn via email as taught by Admission in order to easily distribute the program.

### ***Response to Arguments***

5. Applicant's arguments with respect to claims 1, 3-18 have been considered but are moot in view of the new grounds of rejection.

6. With respect to rejection of claims 1-3, and 4 for obviousness-type double patenting over Application No. 09/996,161, Applicants' argument is persuasive. Accordingly, the rejection is withdrawn.

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7. **NOTE:** The Art Unit location of your application in the USPTO has changed. To aid in correlating any papers for this application, all further correspondence regarding this application should be directed to Art Unit 2615.


### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Con P. Tran whose telephone number is (571) 272-7532. The examiner can normally be reached on M - F (8:30 AM - 5:00 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor Vivian C. Chin can be reached on (571) 272-7848. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

cpt CPJ  
June 14, 2006

  
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